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Debtors and Debtors in Possession

10 UNITED STATES BANKRUPTCY COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

13 In re

14 ☐ SIZZLER USA ACQUISITION, INC., a  
Delaware corporation

15 ☐ SIZZLER USA HOLDINGS, INC., a  
Delaware corporation

16 ☐ SIZZLER USA FINANCE, INC., a  
Delaware corporation.

17 ☐ WORLDWIDE RESTAURANT  
CONCEPTS, INC., a Delaware  
18 corporation

19 ☐ SIZZLER USA, INC., a Delaware  
corporation

20 ☐ SIZZLER USA FRANCHISE, INC., a  
Delaware corporation

21 ☐ SIZZLER USA REAL PROPERTY, INC.,  
a Delaware corporation

22 ☐ SIZZLER USA RESTAURANTS, INC., a  
Delaware corporation

23 ☒ ALL DEBTORS,

24 Debtors and  
Debtors in Possession.

Case No. 20-30748

Joint Administration Requested with  
Case Nos. 20-30746, 20-51400, 20-51401,  
20-51402, 20-51403

Chapter 11 Proceeding

**DEBTORS' EMERGENCY FIRST DAY  
MOTION FOR ORDER AUTHORIZING  
DEBTORS TO HONOR PREPETITION  
OBLIGATIONS TO EMPLOYEES**

Judge: Hon. Elaine Hammond

Date: September 22, 2020

Time: 9:30 a.m.

Place: Tele/Videoconference

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I.

INTRODUCTION

Sizzler USA Acquisition, Inc. (“SUSAA”), Sizzler USA Holdings, Inc. (“SUSAH”), Sizzler USA Finance, Inc. (“SUSAFI”), Worldwide Restaurant Concepts (“WRC”), Sizzler USA, Inc. (“SUSA”), Sizzler USA Franchise, Inc. (“SUSAFR”), Sizzler USA Real Property, Inc. (“SUSARP”), and Sizzler USA Restaurants, Inc. (“SUSAR,” and together with SUSAA, SUSAH, SUSAFI, SUSAFR, SUSARP, WRC, and SUSA, collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned bankruptcy cases (collectively, the “Cases”), move this Court, on an emergency basis, for an interim and final order (1) authorizing – but not requiring – SUSAR, the only Debtor in these Cases that has employees, to: (a) pay prepetition employee wage and salary obligations owed by the Debtors to its employees; (b) reimburse ordinary course prepetition employee business expenses in accordance with the Debtors’ existing company policy; (c) maintain and honor its existing employee benefits programs in the ordinary course of business; and (d) honor all prepetition paid leave claims (vacation pay, sick leave, jury duty pay) in the ordinary course, and (2) (x) authorizing and directing all banks and other financing institutions to receive, process, honor, and negotiate any and all checks drawn on, and transfers made from, the Debtors’ accounts to the extent the checks or transfers are on account of any of the foregoing; and (y) prohibiting all banks from placing any holds on, or attempting to reverse, any automatic transfers on account of the foregoing; and (3) for such additional relief that the Court deems just and proper.

The Debtors bring this motion (the “Motion”) pursuant to sections 105(a), 363(b), and 507 of title 11 of the United States Code (the “Bankruptcy Code”). This motion is based on the within discussion and memorandum of points and authorities, the concurrently filed *Declaration of Christopher Perkins in Support of First Day Motions* (the “Perkins Declaration”), the other papers of record in these cases, and upon such further oral and documentary evidence as may be presented prior to or at the time of the hearing on the Motion.

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**II.**

**STATEMENT OF FACTS**

**A. The Debtors' Background**

Each of the Debtors is a Delaware corporation. Since 1958 (first as "Del's Sizzler Family Steak House"), the Debtors (and their predecessors in interest) have been in the business of operating, and then franchising, family restaurants. Originally, the Debtors' menu focused on grilled steaks, but later expanding into other items, including their famed "Salad Bar." The Debtors are operating their respective businesses as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code. Specifically, SUSAR operates fourteen company-owned restaurants (all in California) and approximately 93 franchisee- and licensee-owned restaurants in California, Oregon, Washington, Arizona, Nevada, New Mexico, Utah, Idaho, Florida and Puerto Rico. Only the company-owned restaurants are the subject of these bankruptcy Cases. SUSAR also operates a support center and test kitchen facility in California for the company-owned restaurants and operations related to the other Debtors' franchise businesses.

Many of the company-owned restaurant locations were struggling to maintain profitability prior to the pandemic emergency for a variety of reasons, including recent increases to labor costs and local taxes. Since the emergence of pandemic, multiple local and state-wide orders forced SUSAR to cease all operations at the company-owned restaurant locations for extended periods at least twice, ultimately forcing Debtors to seek chapter 11 relief on September 21, 2020 (the "Petition Date"). The Perkins Declaration contains a detailed discussion of the Debtors' background, structure, and the events leading to their chapter 11 cases. By this reference, the discussion contained in the Perkins Declaration is incorporated in this Motion as though fully set forth here.

**B. Need for Relief**

The relief requested by this Motion is necessary and appropriate to ensure a smooth transition into chapter 11, to normalize and maintain the Debtors' existing business operations during the turbulent early stages of this bankruptcy case, and to preserve and maximize value for the benefit of the Debtors' creditors. SUSAR operates a chain of restaurant locations in California

1 as well as a test kitchen facility and a support center for its business and that of the related  
2 Debtors' business operations. As SUSAR intends to continue to operate its business post-petition,  
3 it is imperative that it retain the support of its employees. Any delay by SUSAR in honoring its  
4 prepetition employee obligations will destroy its relationship with its Employees, irreparably  
5 impair employee morale, and may cause a mass exodus of Employees. Indeed, the Debtors  
6 believe that any failure to honor certain of SUSAR's employee-related obligations in the ordinary  
7 course of its business would create hardship and discontent among SUSAR's employees, which  
8 would in turn decrease productivity and undermine SUSAR's ability to retain employees and the  
9 ability of all of the Debtors to continue normal operations, and ultimately, to preserve and  
10 maximize the value of their estates, including the restaurant operations. Without employee  
11 support, the Debtors face the imminent risk that their operations will be severely impaired.

12 If SUSAR cannot assure its employees that it will promptly pay and honor employment-  
13 related payments and benefits, employee morale and the Debtors' operations, already severely  
14 impacted by the ongoing pandemic emergency, will suffer even further. The Debtors believe that  
15 the livelihood of many of SUSAR's employees depends on the income provided through their  
16 work for SUSAR. Many of them rely on their wages as their only source of income, and the loss  
17 of this income for even a few days may result in a severe financial hardship for them. SUSAR  
18 also seeks to honor post-petition (but not pay out), its prepetition paid time off obligations to  
19 employees. Additionally, prepetition, a few of SUSAR's employees have incurred a relatively  
20 small amount of reimbursable business expenses and allowances in the course of their  
21 employment. SUSAR seeks to reimburse these amounts, as the applicable employees would be  
22 otherwise personally obligated to pay company expenses. Lastly, SUSAR's employees and their  
23 dependents would unduly suffer if they were to be unable to utilize SUSAR's medical benefits,  
24 which are particularly essential during the current coronavirus pandemic.

25 **C. Relief Requested by This Motion**

26 By way of this Motion, the Debtors seek an interim and final order from the Court,  
27 substantially in the form attached hereto as Exhibit A. Specifically, the Debtors request an order:  
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1           1.       Authorizing – but not requiring – SUSAR, the only Debtor in these Cases  
2       that has employees, to:

3               a.       Pay prepetition employee wage and salary obligations owed by the  
4       Debtors to its employees;

5               b.       Reimburse ordinary course prepetition employee business expenses  
6       in accordance with the Debtors’ existing company policy;

7               c.       Maintain and honor its existing employee benefits programs in the  
8       ordinary course of business; and

9               d.       Honor all prepetition paid leave claims (vacation pay, sick leave,  
10      jury duty pay) in the ordinary course, and

11          2.       Authorizing and directing all banks and other financing institutions to  
12      receive, process, honor, and negotiate any and all checks drawn on, and transfers made  
13      from, the Debtors’ accounts to the extent the checks or transfers are on account of any of  
14      the foregoing;

15          3.       Prohibiting all banks from placing any holds on, or attempting to reverse,  
16      any automatic transfers on account of the foregoing; and

17          4.       For such additional relief that the Court deems just and proper.

18      The relief requested by this Motion therefore is in the best interest of the Debtors’  
19      bankruptcy estates and should be approved.

20      **D.     The Debtors’ Employees and Prepetition Employee Obligations**

21      In total, SUSAR has 481 employees and provides medical and dental benefits to an  
22      additional 26 individuals employed by Carson Sizz, LLC (collectively with the 481 SUSAR  
23      employees, the “Employees”) under a franchise management agreement with that franchisee  
24      (“Carson Sizz”). Of these Employees, 203 are “active” and 183 work full time, while 278 are on  
25      leave or furlough. Of the employees on leave or furlough, SUSAR continues to provide medical  
26      and other benefits to 35 furloughed employees and eight who are on leave. Of the total 481  
27      SUSAR employees, 27 full-time Employees work at the Support Center, which runs corporate  
28      operations for each of the Debtors and for all of the company-owned restaurants. The Support

1 Center staff also provides assistance to other franchise restaurants that the Debtors do not own.  
2 The rest of SUSAR's Employees work at the 14 company-owned restaurant locations in  
3 California. Of these, 27 are active full-time restaurant managers, while another three managers  
4 presently are on leave and two are on furlough. The other Debtors do not currently have any  
5 employees.

6 As of the Petition Date, various amounts of prepetition employee obligations had accrued  
7 or were owed but unpaid because, among other things:

8 1. The Debtors filed these Cases in the midst of SUSAR's customary payroll  
9 periods (paychecks are normally distributed every two weeks). As such, various amounts  
10 in prepetition payroll liabilities were due and owing as of the Petition Date. SUSAR filed  
11 its chapter 11 petition mid-way through one of its regular and customary payroll periods  
12 (and the next payroll is due September 25, 2020, and must be funded by September 23,  
13 2020);

14 2. There is a short "lag" between the time employees are paid and the pay  
15 period covered by their paychecks. Paychecks are issued on every other Friday, on  
16 account of services rendered to the Debtors through the previous Sunday. The last payday  
17 was September 11, 2020, which covered the period August 24, 2020, through September 6,  
18 2020;

19 3. Some payroll and expense reimbursement checks issued to employees prior  
20 to the Petition Date have not yet been presented for payment or have not yet cleared the  
21 banking systems and, accordingly, were not honored and paid as of the Petition Date; and

22 4. Certain other forms of compensation (including sick pay, paid time off, and  
23 withholdings for benefit plan contributions) related to services rendered prepetition have  
24 not yet been honored because such benefits, although accrued before the Petition Date,  
25 were not payable but rather will become payable in the ordinary course of the SUSAR's  
26 business.

1 For the reasons discussed below, it is crucial that the Court authorize SUSAR to pay to  
2 their employees prepetition wages and salaries and expense reimbursements earned and incurred  
3 in the ordinary course, and to honor but not pay certain prepetition benefits.

4  
5 **E. SUSAR's Employees are Essential to the Debtors' Continued Operations and to**  
6 **Preserve the Value of their Estates**

7 SUSAR's Employees are essential to the Debtors' continued operation and viability, as  
8 well as the Debtors' ability to fulfill their duties as debtors in possession. Certain of SUSAR's  
9 Support Center Employees are and will be involved in preparing the Debtors' schedules of  
10 liabilities and assets and statements of financial affairs in the cases, preparing financial analyses  
11 and budgets, preparing monthly operating reports, and overseeing the Debtors' operations.

12 The filing of this Case has disrupted the Debtors' normal operations. Unless SUSAR can  
13 promptly honor its prepetition employee obligations, the Debtors believe that employee morale  
14 will suffer, and many Employees may be unable to meet their own personal obligations in these  
15 already trying times. If that happens, it will lead to the risk that Employees will find employment  
16 elsewhere, and the Debtors' business operations will be interrupted in the midst of this critical  
17 period. SUSAR's Support Center Employees are intimately knowledgeable about all of the  
18 Debtors' operations and business affairs, as well as about operations at the company-owned  
19 restaurants, and their retention is necessary to ensure a timely and efficient bankruptcy process.  
20 Moreover, the SUSAR Employees who are employed at the company-owned restaurants,  
21 particularly the restaurant managers, are critical to maintaining restaurant operations necessary to  
22 maintain an income stream for the Debtors. Without SUSAR's Employees, none of the Debtors  
23 will be able to continue to effectively operate its business, and the ability of the Debtors to  
24 preserve and maximize the value of their assets – including restaurant operations at the company-  
25 owned restaurant locations – will be jeopardized. Therefore, all major constituencies, including  
26 creditors, Employees, and Employee dependents will benefit from SUSAR's ability to pay certain  
27 prepetition benefits and expenses to its Employees.

1 **F. Wages and Salaries**

2 SUSAR administers its payroll obligations through third parties, and its Employees are  
3 paid every two weeks (every other Friday) for the work period ending the prior Sunday. The  
4 Debtor's average gross payroll for its Employees is approximately \$200,000 per two-week period.  
5 The total amount of the prepetition wages and salaries owed is collectively approximately  
6 \$200,000, and no single employee is entitled to an amount in excess of \$13,650.

7 In the ordinary course of business, Automatic Data Processing, Inc. ("ADP") processes and  
8 disburses SUSAR's payroll based on data that it receives from SUSAR. ADP calculates the  
9 amounts necessary to fund payroll (including payroll taxes, withholdings, and other deductions),  
10 and debits SUSAR's account accordingly in advance of payroll and disburses the funds to the  
11 Employees and third parties, as applicable, by electronic transfers or by checks.

12 No employee has received, or will receive, post-petition payment on account of his or her  
13 prepetition wages in excess of \$13,650, consistent with the statutory cap in Section 507(a)(5) of  
14 the Bankruptcy Code.

15 Failure to approve payment for prepetition employee wages would be a blow to employee  
16 morale and could undermine SUSAR's ability to retain its Employees at this critical time period.  
17 Many of the Employees are reliant on the timely payment of their wages to cover their monthly  
18 living expenses. The Employees' commitment and loyalty to the Debtors is critical to the  
19 Debtors' successful navigation of the bankruptcy process.

20 **G. Employee Benefits**

21 SUSAR's business practice has been to supplement the wages and salaries of its full-time  
22 Employees by providing them with certain employee benefit programs. These programs include  
23 such standard benefits as paid time off and medical, dental, and vision insurance. SUSAR is  
24 continuing these programs in the ordinary course of its business operations, subject to Court  
25 approval. The relief sought in this Motion relates only to those unpaid prepetition benefits that  
26 were earned in connection with certain of SUSAR's benefit programs as more fully described  
27 below.

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1           1.       Paid Time Off Benefits

2           SUSAR's employees accrue paid time off at the following rates according to the below  
3 chart:

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Completed Length of Service	Accrual Rate Per Pay Period	Annual Paid Time Off	Max Accrual
Hire – 1 year*	3.08 hours*	80 hours	80 hours
1 – 4 years	4.62 hours	120 hours	160 hours
5 – 9 years	5.54 hours	144 hours	184 hours
10 years and above	6.15 hours	160 hours	200 hours

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10 \*Managers-in-Training, Restaurant Managers, and General Managers accrue 3.33 hours  
for their first year of employment.

11           Upon termination, SUSAR pays all Employees for any accrued but unused paid time off,  
12 pursuant to applicable law. By this Motion, the Debtors seek authority, in their sole discretion, to  
13 continue to honor SUSAR's paid time off policies in the ordinary course, including to allow  
14 Employees post-petition to take paid time off earned prepetition. The Debtors' outstanding PTO  
15 liability as of September 20, 2020, was estimated to total \$178,664.42. The Debtors are not  
16 seeking authority now to compensate Employees for accrued and unused paid time off in the event  
17 of a termination. Rather, the Debtors request that any Employees either terminated as a result of  
18 this bankruptcy or in the ordinary course of business will retain a claim for such prepetition  
19 accrued and unused paid time off.

20           2.       Medical, Dental, and Vision Benefits

21           Employees are also entitled to certain medical and dental benefits. SUSAR presently owes  
22 \$400,651.00 in outstanding medical benefits premiums through the end of 2020; \$23,908.00 for  
23 dental benefits premiums through the end of 2020; and \$4,547.00 in vision benefits premiums  
24 through the end of 2020 for its Employees. By this Motion, the Debtors seek authority, in their  
25 sole discretion, to continue to honor SUSAR's medical, dental, and vision benefits policies in the  
26 ordinary course, including allowing Employees post-petition to utilize such benefits. The  
27 Employees' continued ability to utilize SUSAR's medical benefits is particularly crucial given the  
28 need for affordable access to healthcare and testing during the global COVID-19 pandemic.

1           3.     Life and Accidental Death and Dismemberment Insurance and Long Term  
2                     Disability Benefits

3           SUSAR also provides life and accidental death and dismemberment insurance and long  
4 term disability insurance benefits to a few of its key Employees. SUSAR presently owes  
5 \$5,783.00 in outstanding premiums for its life and accidental death and dismemberment insurance  
6 policy through the end of 2020, and \$7,709.00 in outstanding premiums for its long term disability  
7 insurance policy through the end of 2020. SUSAR likewise seeks the authority to maintain these  
8 benefits in the ordinary course, including allowing Employees post-petition to utilize such  
9 benefits.

10 **H.     Employee Reimbursements**

11           From time to time, the Employees incur miscellaneous expenses related to their jobs,  
12 including mileage costs, car allowances, cell phone costs, and other expenses for certain  
13 Employees. In particular, eleven employees are reimbursed up to \$27.50 each every two weeks  
14 for cell phone plans; three employees are reimbursed up to \$1,000 each per month for mileage,  
15 and five employees are reimbursed on average up to \$465 each every two weeks for additional car  
16 allowances. Prepetition, SUSAR routinely reimbursed these expenses. Employees generally  
17 submit expense reports, including receipts or other backup documentation, in order to receive  
18 reimbursement for their business expenses. After receiving approvals, SUSAR would remit  
19 payment to the employee.

20           Based on current information, SUSAR estimates that approximately \$302.50 in  
21 reimbursements for cell phone plans, \$1,500 in reimbursements for mileage, and \$2,324 in  
22 reimbursements for additional car allowances are outstanding and have not been honored and paid  
23 as of the Petition Date. The Debtors are not aware of other reimbursable employee expenses that  
24 have not been presented for payment yet or have not cleared the banking systems yet as of the  
25 Petition Date. By this Motion, the Debtors seek authority to reimburse Employees for the  
26 outstanding prepetition expenses expenses, in order to avoid hardship for the Employees who  
27 would otherwise be independently obligated to pay such amounts.

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III.

ARGUMENT

A. SUSAR's Employees Are Essential to the Debtors' Continued Operations

It is generally recognized that the continuation of a stable employee base and harmonious employee relations in operating chapter 11 cases is critical to preserving the value of the bankruptcy estate.<sup>1</sup> As noted by one court, “the need to pay pre-petition employee wage claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.” *In re Equalnet Comm. Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000). The Debtors believe that any failure by SUSAR to pay its prepetition employee-related obligations and otherwise honor such obligations in the ordinary course of business would create great concern and discontent among its Employees and undermine morale, and would therefore endanger SUSAR's ability to retain its Employees. As discussed above, the Debtors require the services of these Employees to operate their businesses and preserve the value of the bankruptcy estate for creditors. Due to the Employees' familiarity with the Debtors' business operations, SUSAR's current Employees are crucial to the Debtors' operations on a day-to-day basis, and ultimately, to a successful outcome for creditors.

Courts have often permitted debtors to pay prepetition wage claims in the ordinary course of business in response to a motion filed by the debtor in possession near the beginning of the case.<sup>2</sup> Furthermore, the relief requested herein is routinely granted in chapter 11 cases that

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<sup>1</sup> See, e.g., *LTV Corp. v. Aetna Cas. & Surety Co. (In re Chateaugay Corp.)*, 116 B.R. 887, 898 (Bankr. S.D.N.Y. 1990); *In re Gulf Air, Inc.*, 112 B.R. 152, 154 (Bankr. W.D. La. 1989) (“[R]etention of skills, organization, and reputation . . . must be considered valuable assets contributing to going concern value and aiding rehabilitation . . .”).

<sup>2</sup> See e.g., *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2016) (recognizing that “‘first-day’ wage orders” serve “significant Code-related [] objectives”); see also, 4 *Collier on Bankruptcy* ¶ 507.06 (16<sup>th</sup> ed. rev. 2019).

1 involve a workforce that is critical to the debtor's business operations.<sup>3</sup> The Debtors cannot afford  
2 to lose the services of the Employees during this critical time period. The Debtors' business  
3 cannot continue without SUSAR's workforce. If the Debtors cannot promptly assure the  
4 Employees that SUSAR will honor employment benefits as described above, the Debtors'  
5 operations likely will suffer immediate and irreparable harm, due to resulting employee  
6 resentment, loss of employee goodwill, and possible attrition, all at this critical time for the  
7 Debtors.

8 **B. Honoring the Prepetition Employee Obligations is Just and Necessary to Preserve**  
9 **Employee Morale**

10 The prepetition employee obligations are critical to the Employees' livelihood. Many of  
11 these Employees rely on their wages as their only source of income. To them, the loss of this  
12 income for even a few days may result in a financial hardship. Allowing SUSAR to honor its  
13 prepetition employee obligations is just under the circumstances because it would reassure the  
14 Employees that these essential benefits will not be disrupted. This would ameliorate the financial  
15 difficulties of SUSAR's Employees, which is recognized as one of the reasons for the priority  
16 status that the Bankruptcy Code affords the wages of debtors' employees.

17 The Debtors believe that any failure by SUSAR to honor its prepetition employee  
18 obligations would cause hardship to its Employees. Granting the requested relief and approving  
19 these obligations contributes to alleviating the financial hardship of the employees and should be  
20 approved.

21 **C. The Prepetition Employee-Related Amounts are Within the Priority Claim Cap of**  
22 **Section 507(a)(4) and would be Paid Ahead of Unsecured Creditors**

23 Section 507(a) provides fourth priority for:

24 (4) allowed unsecured claims, but only to the extent of \$13,650 for  
25 each individual or corporation, as the case may be, earned within

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27 <sup>3</sup> See, e.g., *Burchinal v. Central Washington Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490  
28 (9th Cir. 1987) (courts have permitted the payment of employee prepetition debts when necessary  
for rehabilitation).

1 180 days before the date of the filing of the petition or the date of  
2 the cessation of the debtor's business, whichever occurs first, for —

3 (A) wages, salaries, or commissions, including vacation,  
4 severance, and sick leave pay earned by an individual...<sup>4</sup>

5 The wages and other prepetition employee-related obligations accrued within the 180-day  
6 period prior to the Petition Date are well within the priority claim cap under section 507(a)(4).  
7 The Employees owed these obligations may file claims for these amounts against SUSAR's estate.  
8 Such claims would be entitled to section 507(a)(4) priority status and, thus, would be paid ahead  
9 of other unsecured claims. As such, the Debtors maintain that the payment of the prepetition  
10 employee-related amounts is appropriate and should be approved.

11 **D. Reimbursing Employee Business Expenses and Honoring Employee Benefits**  
12 **Programs are Matters that are Within the Debtors' Business Judgment**

13 It is generally recognized that the continuation of a stable employee base and harmonious  
14 employee relations in operating chapter 11 cases is critical. As the court stated in *In re*  
15 *Chateaugay Corp.*:

16 [E]mployee good will and contentment is an asset which is vital to the  
17 continuation of a debtor's business operation and its ability to  
18 effectively reorganize during the Chapter 11 process. [citation omitted]  
19 In granting Debtors' applications for permission to provide hardship  
20 payments to injured workers, this Court determined that the  
21 uninterrupted payment of LTV Steel workers' compensation obligations  
22 is essential to employee morale and industrial tranquility which, in turn,  
23 are critical to a successful reorganization.<sup>5</sup>

24 The relief requested to make payroll and reimbursement payments for the prepetition  
25 period and to honor employee benefit programs in the ordinary course of business is necessary to  
26 preserve employee morale and ensure that the Debtors can retain the valuable and experienced  
27 employees that are the backbone of their business and will preserve the value of their estates. The  
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29 <sup>4</sup> 11 U.S.C. § 507(a)(4).

30 <sup>5</sup> *LTV Corp. v. Aetna Casualty & Surety Co. (In re Chateaugay Corp.)*, 116 B.R. 887, 898 (Bankr.  
31 S.D.N.Y. 1990); *see also In re Gulf Air, Inc.*, 112 B.R. 152, 154 (Bankr. W.D. La. 1989)  
32 (“[R]etention of skills, organization, and reputation . . . must be considered valuable assets  
33 contributing to going concern value and aiding rehabilitation. . .”).

1 relief requested will also provide an incentive for employees to continue to provide quality  
2 services to SUSAR and its customers and franchisees.

3 The employee benefit plan payments are further justified because they are within the  
4 priority claim cap under Section 507(a)(5) and thus would be paid ahead of other unsecured claims  
5 in any event.

6 **E. It is in the Best Interests of the Debtors' Estates that Prepetition Payroll and**  
7 **Reimbursement Payments be Paid and the Benefit Programs be Maintained as to**  
8 **Continuing Employees**

9 As described above, failure to honor payroll payments for the prepetition period and to  
10 maintain the benefit programs would be detrimental to SUSAR's employee base and diminish the  
11 Debtors' prospects for maximizing the return to their creditors.

12 Courts frequently have allowed debtors in possession to engage in transactions that  
13 encourage employee stability for the good of the debtor's estate and creditors. In *In re Gulf Air,*  
14 *Inc.*,<sup>6</sup> the court authorized the payment of all prepetition amounts due to the debtor's employees,  
15 including salary, expenses, and the payment of prepetition health, life, and workers' compensation  
16 premiums. The court stated:

17 While prepetition claims are normally disposed of in a plan of  
18 reorganization and in accordance with statutory priorities, there are  
well-established "necessity of payment" and similar exceptions.

\* \* \* \*

19 The Court finds and concludes that grant of the Debtor's Motion in  
20 its entirety is in the best interest of creditors, the Debtor, and its  
employees, and is "necessary", in fact, indispensable at this time for  
21 any successful reorganization. An air carrier, no less than a rail  
carrier, is more than the sum of its parts. Despite the capital-intensive  
22 nature of the railroad industry, and to a lesser extent, the airline  
industry, retention of skills, organization, and reputation for  
23 performance must be considered valuable assets contributing to going  
concern value and aiding rehabilitation where that is possible.<sup>7</sup>

24 \_\_\_\_\_  
25 <sup>6</sup> *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989).

26 <sup>7</sup> *Id.* at 153-54. *In re Chateaugay Corp.*, 116 B.R. at 898 ("In granting Debtors' applications for  
27 permission to provide hardship payments to injured workers, this Court determined that  
the . . . payment . . . is essential to employee morale . . ."); *In re Eagle-Picher Indus., Inc.*, 124  
28 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (debtor may pay prepetition debt due employees to avert  
serious threat to continued operations); *Dubuque Packing Co. v. Stonitsch (In re Isis Foods, Inc.)*,

1 Likewise here, SUSAR's Employees should be allowed their regular benefits and paid time  
2 off accruals. These are important components of their compensation. As to paid time off, it  
3 would be unfair to penalize those Employees with substantially earned paid time off accruals,  
4 which result from Employees' decisions to provide service to the Debtors instead of taking  
5 vacation time. The Debtors propose to honor such paid time off and to allow Employees to use it  
6 until terminated, in order to reward loyalty to the Debtors.

7  
8 **IV.**

9 **EMERGENCY CONSIDERATION**

10 The Debtors respectfully request emergency consideration of this Motion pursuant to Rule  
11 6003 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), which empowers a  
12 court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the  
13 extent that relief is necessary to avoid immediate and irreparable harm." As previously discussed  
14 throughout, the Employees are critical to maintaining the Debtors' business operations and their  
15 ability to meet their financial and operational reporting and other obligations in bankruptcy. If the  
16 Debtors do not receive the requested relief immediately, their business operations would be  
17 severely disrupted at this critical juncture in the chapter 11 cases. Accordingly, the Debtors  
18 respectfully submit that they have satisfied the "immediate and irreparable harm" standard of  
19 Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief  
20 requested in this Motion on an emergency basis.

21 **V.**

22 **REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS**

23 The Debtors respectfully request a waiver of any applicable notice requirements under  
24 Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to  
25 Bankruptcy Rule 6004(h). As explained above and in the Perkins Declaration, the relief requested  
26 herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample

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37 B.R. 334, 336 n.3 (W.D. Mo. 1984), *appeal dismissed*, 738 F. 2d 445 (8th Cir. 1984) ("It would  
appear that the proposed transfers could be presented in advance to a bankruptcy court for its  
approval and would thereafter be insulated from attack under section 549 . . . .").

1 cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and  
2 the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements  
3 and such stay apply.

4 **VI.**

5 **RESERVATION OF RIGHTS**

6 Nothing contained herein is intended or shall be construed as (i) an admission as to the  
7 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any party in interest's  
8 rights to dispute the amount of, basis for, or validity of any claim of any creditor or interest of any  
9 interest holder under applicable bankruptcy or non-bankruptcy law; (iii) a waiver of any claims or  
10 causes of action which may exist against any creditor or interest holder; or (iv) an assumption,  
11 adoption, or rejection of any agreement, contract, or lease between the Debtors and any third party  
12 under section 365 of the Bankruptcy Code. The Debtors reserve all of their rights under the  
13 Bankruptcy Code.

14 **VII.**

15 **NOTICE**

16 Notice of this Motion has been provided by email, phone, or first class mail to: (i) the  
17 Office of the U.S. Trustee Region 17, and (ii) the holders of the top twenty largest unsecured  
18 claims against each of the Debtors.

19 No prior request for the relief sought in this Motion has been made by the Debtors to this  
20 Court or any other court.

21 **VIII.**

22 **CONCLUSION**

23 WHEREFORE the Debtors respectfully request entry of an order, substantially in the form  
24 attached as **Exhibit A**, granting the relief requested, and providing such other and further relief as  
25 is just and proper.

1 Dated: September 21, 2020

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3  
4 By

*/s/ Ori Katz*

ORI KATZ

JEANNIE KIM

GIANNA SEGRETTI

7 Proposed Attorneys for Debtors and Debtors in  
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**EXHIBIT A**  
**(Proposed Order)**

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

2 A Limited Liability Partnership

3 Including Professional Corporations

4 ORI KATZ, Cal. Bar No. 209561

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6 GIANNA SEGRETTI, Cal. Bar No. 323645

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13 gsegretti@sheppardmullin.com

14 [Proposed] Attorneys for

15 Debtors and Debtors in Possession

16 UNITED STATES BANKRUPTCY COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 In re

Case No. 20-30748

19 ☐ SIZZLER USA ACQUISITION, INC., a  
20 Delaware corporation

Joint Administration Requested with  
Case Nos. 20-30746

21 ☐ SIZZLER USA HOLDINGS, INC., a  
22 Delaware corporation

Chapter 11

23 ☐ SIZZLER USA FINANCE, INC., a  
24 Delaware corporation.

**[PROPOSED] ORDER APPROVING  
DEBTORS' EMERGENCY MOTION FOR  
AN ORDER AUTHORIZING DEBTOR  
TO HONOR PREPETITION  
OBLIGATIONS TO EMPLOYEES**

25 ☐ WORLDWIDE RESTAURANT  
26 CONCEPTS, INC., a Delaware corporation

27 ☐ SIZZLER USA, INC., a Delaware  
28 corporation

☐ SIZZLER USA FRANCHISE, INC., a  
Delaware corporation

Judge: Hon. Elaine Hammond

Date: September 22, 2020

☐ SIZZLER USA REAL PROPERTY, INC.,  
a Delaware corporation

☐ SIZZLER USA RESTAURANTS, INC., a  
Delaware corporation

☒ ALL DEBTORS,

Debtors and  
Debtors in Possession.

Time: 9:30 a.m.

Place: Tele/Videoconference

The Debtors' Emergency First Day Motion for Order Authorizing Debtors to Honor

Prepetition Obligations to Employees (the "Motion"), filed by Sizzler USA Acquisition, Inc.

1 (“SUSAA”), Sizzler USA Holdings, Inc. (“SUSAH”), Sizzler USA Finance, Inc. (“SUSAFI”),  
2 Worldwide Restaurant Concepts (“WRC”), Sizzler USA Inc. (“SUSA”), Sizzler USA Franchise,  
3 Inc. (“SUSAFR”), Sizzler USA Real Property, Inc. (“SUSARP”), and Sizzler USA Restaurants,  
4 Inc. (“SUSAR,” collectively the “Debtors”), on September 21, 2020 as Docket No. \_\_, came  
5 before the Court for hearing on \_\_\_\_\_, 2020 at [ : ] [a.m]/[p.m.]. Appearances were as  
6 noted on the record. Based upon the Court’s review of the Motion, the declarations and other  
7 pleadings filed in support of the Motion, the arguments of counsel at the hearing on the Motion,  
8 and all pleadings and evidence of record in this case,

9 IT IS HEREBY ORDERED THAT:

10 1. The Motion is GRANTED. Capitalized terms not defined in this Order shall have  
11 the meanings given to them in the Motion.

12 2. SUSAR is authorized, but not required, in its sole discretion:

13 (a) to pay the prepetition wages and salaries owed to its Employees, including  
14 payroll and reimbursement requests in an amount up to the cap of \$13,650 per Employee  
15 under section 507(a)(4) of the Bankruptcy Code (except as otherwise noted in the Motion);  
16 and

17 (b) to pay any prepetition claims arising from SUSAR’s employee benefit plans  
18 and programs and otherwise honor, in the ordinary course of business, existing employee  
19 benefit plans and programs and paid time off accruals, including medical and dental  
20 benefits and all related costs and expenses, as such policies were in effect as of the  
21 commencement of this Case, even if so doing involves honoring prepetition claims.

22 3. All Banks and other financial institutions are authorized and directed to receive,  
23 process, honor, and negotiate all checks drawn on, and transfers made from, the Debtors’ accounts  
24 and presented for payment on account of the Debtors’ wage, salary, expense reimbursement, and  
25 employee benefit plan or program obligations. The Banks shall not be liable to any party on  
26 account of: (a) following the Debtors’ representations, instructions, or presentations as to any  
27 order of the Court (without any duty of further inquiry); (b) the honoring of any prepetition  
28 checks, drafts, wires, or ACH Payments in a good faith belief or upon a representation by the

1 Debtors that the Court has authorized such prepetition check, draft, wire, or ACH Payments; or (c)  
2 an innocent mistake made despite implementation of reasonable handling procedures.

3 4. Nothing in this Order: (i) is intended or shall be deemed to constitute an  
4 assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as  
5 to the validity of any claim against the Debtors or their estates; (ii) shall impair, prejudice, waive,  
6 or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or  
7 amount of any claim against the Debtors or their estates; (iii) shall impair, prejudice, waive, or  
8 otherwise affect the rights of the Debtors or their estates with respect to any and all claims or  
9 causes of action against any third party; or (iv) shall be construed as a promise to pay a claim or  
10 continue any applicable program post-petition, which decision shall be in the discretion of the  
11 Debtors. Any payment made pursuant to this Order is not intended to be nor should it be  
12 construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to  
13 subsequently dispute such claim.

14 5. Notwithstanding anything to the contrary contained in this Order, any payment  
15 made or other action taken by the Debtors pursuant to the authority granted herein, as well as the  
16 exercise of any and all other rights and authorizations granted or approved hereunder, shall be  
17 subject in all respects to any final orders regarding the Debtors' use of cash collateral approved by  
18 this Court in these Chapter 11 Cases (the "Cash Collateral Order").

19 6. In the event of any inconsistency between the terms or conditions of this Order and  
20 the terms or conditions of the Cash Collateral Order, the provisions of the Cash Collateral Order  
21 shall govern and control.

22 7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

23 8. Notice of the Motion as provided therein shall be deemed good and sufficient  
24 notice of such Motion under the circumstances, and the requirements of Bankruptcy Rule 6004(a)  
25 and the Local Rules are satisfied by such notice.

26 9. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and  
27 conditions of this Order shall be immediately effective and enforceable upon its entry.

28

1           10.     The Debtors are authorized to take all such actions as are necessary or appropriate  
2 to implement the terms of this Order.

3           11.     A final hearing to consider the relief requested in the Motion shall be held on  
4 [\_\_\_\_\_] at [\_\_\_\_\_] (prevailing Pacific Time) and any objections or responses  
5 to the Motion shall be filed and served so as to be actually received on or prior to  
6 [\_\_\_\_\_] at [\_\_\_\_\_] (prevailing Pacific Time).

7           12.     This Court shall retain jurisdiction to hear and determine all matters arising from or  
8 related to the implementation, interpretation, or enforcement of this [Interim] Order.

9  
10                               **\*\*\*END OF PROPOSED ORDER\*\*\***  
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